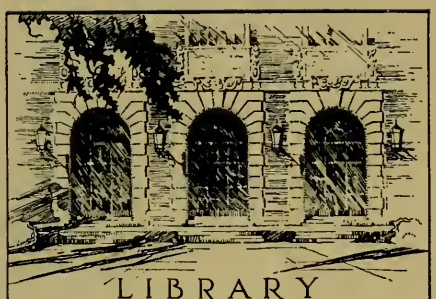

With the writer's kindest regards.

THE

GOVERNMENT OF THE CHURCH

IN RELATION TO

THE STATE AND THE LAITY.

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BY

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THE GOVERNMENT OF THE CHURCH IN RELATION TO THE STATE AND THE LAITY.

The matter of this paper, though often forming one topic of interest and discussion at the present day, consists of two subjects. Two kinds of governing bodies are to be discussed in their relation to the Church, the State, and the laity; the State, that is, the whole nation in its civil society, apart from the consideration of whatever order and whatever religion its several citizens may be—clergy or laity, Christians or heathens, Churchmen or non-Churchmen; the laity, that is, the *fideles* or faithful, who are members of the Church itself, though not ordained to any place in her ministry.

It is obvious that these two kinds of government by the State and by the laity are very different, that they must rest on different principles, and be exercised in different ways. There have been theories and theorists who have represented the government or control of the Church by the State as being in substance the government of the Church by the laity, and who have justified this government upon this ground. But, though in a nation composed entirely of members of the Church, it may possibly be that the laity may preponderate over the clergy in the State, or civil society, while the clergy preponderate in the Church, yet even then the control of the Church by the State will only accidentally express the government of the laity, the laity regulating a matter of State will do so not as lay-Churchmen but as citizens, and in fact to give the control of the Church to the State in such a case is to create two rival bodies, each with despotic power in its own sphere, and with no bond of union between them, rather than to blend with proper admixture of powers and parts the two bodies into one harmonious constitution.

This is so even when the State is composed entirely of members of the Church. Of course, directly persons who are not members of the Church come to have civil rights and influence in the State, all idea of the State representing the laity is gone.

The two subjects, therefore—the government of the Church

by the State, and that by the laity, must be considered separately, and as having only a certain number of points in common.

First, as to the government of the Church by the State.

There are three relations in which a Church or society professing a particular religion may be viewed by a State. It may be prohibited by the State, directly or indirectly, through all the various grades from persecution to unlawfulness, and thence to simple discountenancing. It may be tolerated, *i.e.*, have its property ensured to it by legal protection, as the property of private persons, and its members not affected for better or worse in relation to all matters of State by their professing its religion. Or it and its members may be endowed with peculiar privileges, or State revenues, when it is said in modern parlance to be "established." Many religions have passed through all these phases in the ascending or in the descending scale. But while the broad distinction of the first and third phase has been always known, there has been many an age and country which has been unable to comprehend the intermediate position.

The Athenians of the days of Socrates had an established religion, or set of religions, and every other religion was prohibited or persecuted. Two out of the three charges on which Socrates was condemned to death were, the non-recognition of the gods whom the State recognized, and the introduction of other new gods.

It is familiar to all that at that long period of change which we generally call the Reformation, the struggles between the adherents of the Pope and the Reformers were rarely made for toleration and liberty of conscience, but were generally simple contests for supremacy, that is, contests whether one party or the other should be established, with the privilege of persecuting the other party. In the time of the Commonwealth the most fanatical political party was considered to be that of the Levellers, and one of their special tenets was, that every man ought to be allowed to believe and worship according to his conscience.*

Later still, in the time of William III., the Scotch Presbyterians, who had long groaned under the persecutions of Claverhouse, when they prevailed on the Government to make their sect the established Church in Scotland, immediately enacted and put in force a series of the most cruel and intolerant laws against the Episcopalians; so that it came to pass that on one side of the Tweed a Church was not only tolerated but established with great privileges, while on the

* Lingard, Hist. of England, vol. viii. p. 324. Note YYY.

other side, in a country under the same sovereign, the same Church was not only not established, but actually persecuted.

It has been said that the intermediate position of tolerating a religious body, or Church, is one which has been unknown, and apparently incomprehensible, in many ages and countries.

There is, however, one great exception: the Romans early understood and practised the doctrines of toleration. Indeed it may be said, that through all the middle part of their history the three phases of treatment—prohibition, toleration, and establishment—might be seen together in existence, applied to different religions.

The early Republican state of Rome had an established idolatrous creed, in and by which certain deities and their images were recognized. At a later period, when conquest and commerce had brought her citizens into closer relations with other countries, the deities of these countries, with their images and religious rites, were introduced into Rome. Some of these were tolerated from the first, as for instance, those of the Jews and most of those of the Greeks. The Bacchanalian rites and worship, however, though introduced from Greece, were specially prohibited by a remarkable decree of the Senate, in B.C. 186. The deities and rites of the Egyptians were at first prohibited, but afterwards grew to be connived at and tolerated.

The Christian religion was, as we all know, very differently treated. It was from the first prohibited, and its members were from time to time subjected to the fiercest persecution. In the intervals between these persecutions, however, it may be said to have been connived at; and some time before the reign of Constantine the Church was beginning to acquire a quasi-legal status or position with respect to her property.

It was not however till the reign of Constantine the Great that the Church became *collegium licitum*, that is a lawful society or club. From that moment it was completely tolerated. It had further, with the one exception of Julian, emperors professing its religion. It must not however be considered that Christianity was established, in the sense of having any peculiar privileges above other religions, in the reign of Constantine.

Her establishment was of slow growth, and was not matured till after the reigns of many Christian emperors, as the Church gradually acquired civil privileges for her bishops and officers, civil sanctions to her jurisdiction and Courts, and special rights as to the acquisition and preservation of her property. But

during this period, and even after the Church was maturely established, the other religions were not prohibited. For a long time the idolatrous religions continued to be established as before by the State. Each Roman emperor called himself Pontifex Maximus, till the reign of Gratian in A.D. 378. Till about the same epoch the State supplied the costs of the sacrifices in the principal temples.

This account of the systems of republican and imperial Rome will help us to see more clearly than we should otherwise have done the necessary relations as to government between the Church and the State under these three phases of treatment, prohibition, toleration, and establishment.

As to the first, then, it is obvious that there cannot be any government of the Church by the State, where that Church and its religion is prohibited.

The State does not govern in this case. On the contrary, it does its best to suppress the Church. It recognizes no rights as existing between its members, no property in them or in the society. The Church and every member of it have nothing to hope, everything to fear, from the action of the State. The relation therefore between the Church and the State as to government is confined to these two cases, where the Church is tolerated or where it is established.

Now there are people who say that toleration is and must be establishment, that every religious society tolerated by the State is thereby in fact established. According to these people the several Dissenting communities are established in England just as the Church is established; and the Church in Ireland is just as much established now, since its disestablishment, as it was before!

The view of these people does not of course agree with that which has been given already in these pages; and it is submitted that it cannot be a correct one.

A Church was tolerated, it was said, when its property was ensured to it as the property of private persons by legal protection, and its members were not affected for better or for worse in relation to all matters of State by their professing its religion. It was established when it and its members were endowed with peculiar privileges.

Now not to quarrel about words, and whether the word established might be better applied to the first than to the second of these two classes, it is obvious that there are several important distinctions between them; and that a Church whose members gain no especial privileges from the State, and are only allowed to unite together in voluntary socie-

ties by compact, as any other citizens may when the object to be attained is not an unlawful one, is in a different position from a Church whose members as such enjoy especial privileges: such as the presence of their bishops in Parliament, the civil sanction given to decrees of their tribunals, the civil power of recovering the contributions of their members, the use of their religious rites and services on all public occasions, and all the consequences of this use; and it is further obvious, and this is the point immediately before us, that a Church thus established or endowed with peculiar privileges by the State must be more subject to the control or government of the State than a Church merely tolerated.

This must be so; for with a Church thus tolerated the State has no interest in saying whether it exists or not, much less whether it holds this or that doctrine, remains in the same faith or changes it from time to time, or whether its tenets and discipline be such as to attract many disciples, or as to alienate its existing members. The only points in which the State is interested in such a Church are these, externally that its doctrine or discipline be not such as to make its members less good citizens for civil purposes, and internally, that its rules or their practical operation be not such as unjustly to subject its members, being citizens of the State, to bodily injury or loss of property, or any of those other rights which in a complicated state of civilization such as ours are equivalent to property.

In regard too to the first of these points the relation of the State to the Church is not exactly governmental, it is rather that of discovering where a doctrine is being taught or a discipline practised harmful to the State. Upon this discovery being made, the State prohibits that doctrine or discipline; and if the Church holds to it, ends by prohibiting the Church, and then the relation between Church and State pass out of the phase of toleration, and government of one by the other ceases.

A modern illustration of this is supplied by the present condition of affairs between Prussia and the Pope. Though the sovereign and the Established Church of Prussia are Protestant, belonging to the mixed Lutheran and Evangelical sects, a large portion of the subjects of Prussia are Catholics, and their religion has accordingly been always tolerated, latterly with a sort of quasi-official relation between the Sovereign, the Bishops, and the Pope.* The government of Prussia has however determined that the new doctrine of

* Phillimore's *International Law*, Vol. ii., Part vii., chap. 8.

Papal Infallibility promulgated by the Pope is one injurious to the State, and has done its best to discourage it. It has not openly prohibited it, but it has prohibited the bishops from taking, in obedience to the Pope, certain disciplinary proceedings against the Catholics who refuse to profess it, thus prohibiting the exercise of a particular piece of discipline which they think necessary. If the contest continues, the result will probably be that the Church or body asserting the lawfulness and necessity of this discipline will be prohibited, while the Old Catholics, the body not holding to the doctrine of Papal Infallibility, nor consequently to the discipline which excommunicates those who do not profess it, will remain tolerated.

As to this external relation it only remains to say that the State must be the judge when a doctrine or discipline is hurtful to its interests. Its rulers must in any case weigh well the respective evils of allowing such doctrine and discipline to be taught and practised, or of alienating a large body of its citizens, by prohibiting their Church. But having so weighed, they are entitled to decide; and the members of that Church must either, if they can consistently with their faith, give up that doctrine and discipline, or must in patience submit to the civil punishment, knowing that cases like theirs must often arise from the different and often contrary claims of the Church and the world. Thus the Christians under the early Roman empire endured persecution, holding fast to their faith, and yet being in all other respects the most loyal citizens of the Empire.

The internal relations of the members of the Church as citizens between themselves can only properly come before the State through the medium of its tribunals; for the essential of a tolerated as opposed to an established religion is that no special laws are made for it; only its members are treated like ordinary citizens, and its whole body like any other society voluntarily formed for some lawful purpose.

No punishment therefore causing bodily pain can be legally inflicted by virtue of the laws of such a Church on any of its members; and any member suffering such punishment can put the laws in force before the tribunals against his punishers as against men who have committed an act of lawless violence.

No member again can be deprived of his private property or mulcted of any part of it by virtue of the laws of his Church.

It is, however, with regard to the general funds contributed by numerous subscribers and the charitable bequests of former members that controversies generally arise; and in deciding these controversies, the tribunals must proceed on the same

grounds on which they would proceed in deciding a case of some civil club or association, and no other. If a member of the Church is appointed to a particular place in it having an endowment, and the rules under which he was appointed provide that he shall only be removed for just cause, there is a contract between him and the other members of the society which cannot be broken; and if he be removed, the tribunals must see that there was just cause for removing him, and must determine what just cause meant under the rules by which he contracted to be bound; but if the rules go on, that in case he be removed and denies that there was just cause for his removal, he may appeal to a particular body, a sort of *forum domesticum*, a tribunal of arbitration within the society, whose decision shall be conclusive, then the tribunals of the State have only to see that no impediment has been placed to his appeal, and that the domestic tribunal has decided as a tribunal, that is without fraud or a violation of those plain rules of justice which amounts in substance to fraud, for fraud vitiates all contracts. Just in the same way is the case of an ordinary club. If the rules provide that a member may be expelled the club for improper conduct, and a question arises, the tribunal must determine what is improper conduct; but if the rules say that, when any member is accused of anything which in the opinion of the committee of the club renders it expedient that he shall be removed from the club, the committee may remove him, and a question arises, the only matters the tribunal will look into will be these: Was the member accused, and did the committee act *bonâ fide*, and without anything approaching to fraud upon him in removing him?

Practically then a tolerated Church is only subject to the control of the State in these ways: its doctrine and discipline may be inspected to see that there is nothing civilly hurtful in them, and disputes between its members where person or property is concerned, must ultimately come in some way, and subject to certain limitations, before the civil tribunals. There are perhaps a few unimportant cases in which a tolerated Church like any other society or *collegium*, developes new rights in relation to persons outside it and to the whole State, which will arise in the detail of administration; but they are trifling, and may be left out of consideration here.

The next question is as to the government of an established Church by the State. First of all an established Church will be governed or controlled by the State in all cases where a tolerated Church is governed. Thus it will be in the power of the State to examine into any new doc-

trine or discipline of such a Church, and to prohibit any it may think injurious; and the disputes as to person or property between its members will ultimately come before the tribunals of the State, whether these tribunals be the ordinary civil tribunals, or tribunals established by the Church; for these latter may be considered as so far tribunals of the State, inasmuch as without the sanction of the State they would never decide a question of person or property, and this sanction is given only on condition of their proceeding in certain recognized ways, and not deciding contrary to the civil law of the State.

But besides the ordinary government by the State incident to every tolerated Church, an established Church is subject to further government. It is a matter of importance to the State that the Established Church shall in the first place comprehend as many as possible of its citizens; for if there were not some peculiar advantage and importance in its citizens being members of the Church, the State would never have established it. It is a matter of importance also to the State that the Church should be internally well-governed, both because thereby more members are likely to be secured to it, and also, because it is so bound up with the State, that misgovernment in one reflects discredit upon and seriously injures the other. Then again, if the State not only establishes the Church, but contributes in any measure to its endowment, it is entitled to see that its endowments are not misapplied, and that those who receive them as salaries or stipends, are doing proper work for them. It matters little to the State whether the minister of an unestablished religion does his duty in labouring at his spiritual work or not; but it is most important to it that the ministers of the established religion shall do their duty. If the State is to allow the ecclesiastical tribunals to have civil power over any of its citizens, such as power to fine or to imprison, it will have a right to a voice in the constitution of these tribunals, the appointment of their judges, and the modes of their procedure. If persons of high station in the Church become thereby entitled to civil power and precedence, such as is given for example to the English bishops, the State will have a right to a voice in their appointment.

When all these things have been said, it may appear to some persons that the position of an established Church is one of entire subjection to the government of the State, and that, if its members are allowed to govern their own body in anything, it must be in such trifling matters as the State will delegate to them. But this is not so, for we at once come upon

a great principle which limits the application of everything which has just been said. When the State establishes a Church, it does not create a new Church and a new religion, but it takes an existing Church and religion and establishes them. Consequently, anything that the State by virtue of the establishment may do to that Church, must be such as will not injure the foundations of the Church, such, that is, as will not contravene its essential doctrine and discipline; for otherwise the Church, being compelled to change its doctrine and discipline, would become a new Church, and would be not so much established as created by the State.

I say the State does not create a Church and religion, it takes an existing Church and religion and establishes it. It does so because a *created* religion would answer no end or purpose. A religion must be believed in by its professors. No man sets out with saying, If I were to think so and so about God and my relation to him, it would be a very convenient belief and religion, so I will just suppose that it be my belief, my religion, and I will profess it and act upon it. No; a man professes a belief and religion because he really believes in it, because he is sensible of its truth, and cannot help himself; he takes that religion, makes it his own, and acts upon it.

So it is with the State. Almost every State that has formally adopted and established a religion, has done so because its sovereign or the preponderating body of its citizens have believed it to be true. From the early Saxon kings who, converted by the preaching of S. Augustine, made their subjects follow them to the font, from Clovis in France, and every king or chief of a half-civilized tribe who has since accepted Christianity, to the Parliaments of Edward VI., who believed and proclaimed that the reforms in the teaching and discipline of the Church of England which they were sanctioning were especially inspired by God the Holy Ghost, this is true of them all. And, though there have been instances where the governing power in a State has established a religion in which it did not itself believe, as in the case of the golden calves which Jeroboam set up in Israel, or that probably of the re-establishment of Christianity in France by the first Napoleon in 1802, this does not hurt the argument. It would still have been impossible for the State to create the religion, and the reason it was established, not partially with some of its doctrines omitted, but just as it had been before, was that the people believed in it. Napoleon probably did not believe, but he knew that so many of his subjects believed, in Christianity, that it was important for the safety of his own government

that it should be bound up with Christianity by an establishment. No other religion would have served his purpose, and no religion will serve the purpose of any State save a religion in which its citizens believe. A State therefore establishes, never creates a religion, and a Church teaching that religion; and it is led to establish it for two reasons, either because the sovereign or the predominating body of its members actually believe in it themselves, or because having no particular belief themselves, they find it expedient to give a governmental sanction to the belief of a large body of their subjects. But in both cases they establish either what they believe, or what they wish their subjects to believe; that is, a real existing religion, not a creation of their own, which no one believes in. And to return to my original argument, a State not being able to create a religion or Church, cannot interfere with the Church which it establishes in such fundamental matters as would make the Church substantially what it is not, and would cause it to cease to be that Church.

This then is the first and great limit to the government of the Church by the State. What are fundamental doctrine and discipline in any Church is of course to be decided only by a careful examination of the position of that Church. It would not be difficult however, to take the instance most nearly concerning us, to sketch the general outline of such doctrine and discipline with regard to Catholic Christianity. The fundamental doctrines of a branch of the Catholic Church established in any country, which no State could touch without altering the Church, and making it other than a branch of the Catholic Church, would include those held in the three Creeds, the belief in the divine position and authority of the Church, the sacraments, and the apostolical succession of her bishops and priests. Fundamental discipline would include the canonical subjection of priests to bishops, the spiritual mission to spiritual offices, and the inability of the secular power to make or repeal canons of discipline, and so on. These, therefore, are not matters in which the State, powerful as its relation of government to an Established Church is, can control that Church.

A second and less important limit to the government of an Established Church by the State is fixed by the *ignorance* of the State. To govern well, the governors must understand thoroughly the subject-matter with which they are dealing; that is, the society they are to govern, its existing regulations, the relations between its members, its principles and aims. Now of these the State must be in great part ignorant; its ruling

men are chosen for other reasons than their knowledge of the Church; its own organization is essentially different. This is the case even when the Established Church is so universally received that all citizens of the State are members of it. But where, as in our country, it is merely the Church of the dominant majority, and there are numbers of citizens dissenting from it, many of them too holding high places in the government of the country, the State's ignorance of all Church matters becomes so marked as to make it impossible that it should attempt, except in some few matters, to undertake the internal government of the Church.

This matter will be referred to again. But, to sum up what has been said as to the government of the Church by the State; in a *prohibited* Church there is no such government; in a *tolerated* Church there is government, to the extent of inquiring into and restraining doctrine or discipline hurtful to the interests of the State, and of subjecting to the State tribunals disputes in the Church, when they affect the person or property of any citizen. In an *established* Church there is government by the State, limited by these two conditions, that such government must not violate the fundamental rules of the Church as to doctrine or discipline, and that it must be in matters on which the State is not unfitted by its ignorance to decide.

The second part of this paper should deal with the government of the Church in relation to the laity, that is the members of its own body organised as such members, but distinct from the priesthood. In the former part of the paper we have treated of the government of any Church or religious society by the State; not confining ourselves to the relations between a Christian Church and the State, but endeavouring to see what must be the essential relations between the State and any religious body. This part of the paper deals only with the relations as to government between a Christian, a branch of the Catholic, Church such as our own, and the State.

Nobody pretends for a moment that the laity is to be the one governing body of the Church, to the exclusion of priests and bishops; the only questions are whether they are to have any share at all in the government of the Church, and if so what is to be the extent of that share.

Now it seems that there are two principles which must guide us in this inquiry; the first practical, and of expediency only, is founded on the universal modern recognition of the advantages of self-government, both as contributing to

good government, and much more as tending to raise the self-governing in character and in knowledge. But the second, theoretic and theological, is paramount to the first; it reminds us that, however expedient it may seem to us to put power into the hands of the laity for the sake of their own moral improvement, yet we are dealing with God's Church, and cannot violate His laws for it by giving government or portions of government to hands which He has not empowered to hold it, any more than He has empowered them to ordain, to confirm, or to consecrate the Blessed Eucharist. We must therefore, in the first instance, look to see what power in these matters has been vested in or denied to the laity by the teaching of the Church.

First in importance comes the question of their power in matters of doctrine. The declaration of doctrine is resolvable into two elements, which may be called, though not with strict accuracy, the legislative and the judicial. The first consists in declaring what is the faith of the Church, always implicitly held but never till now declared in an express binding formula, on some particular question which has arisen in the course of the progress of the Church. It is not strictly a legislative proceeding, for the Church never makes new doctrines; it is rather an authoritative development of the faith into mere detail of facts. The second, the judicial, deals in each case with a particular doctrine asserted by one or more particular members of the Church, and pronounces whether that doctrine is or is not consistent with the already expressed faith.

The first, the legislative or developing element, is in matters which relate to the necessary faith of the Church and every member of every branch in it, the exclusive province of Œcumenical Councils, their determination being afterwards ratified and confirmed by the general consent of the Church.

Now, there have been the most elaborate discussions on these points between great divines; and it is therefore with the utmost diffidence and the greatest care that any one should speak on these matters; but it may be said that it is generally admitted that laymen never took part in the actual assembly and meeting of the Œcumenic Council. If this be so, they cannot assert any right in legislation or development of new doctrine. Their power is at the best limited to a share in the veto which is given to all in virtue of the necessity for the subsequent ratification of the decrees of the Council by the whole Church. This power, it seems, they probably have, that is, they share so far with the bishops and priests in the presence

of the Holy Spirit in the Church, that their views are to be reckoned among those whose consent is necessary to make a doctrine one received by the whole Church; but they have no right to a voice in the Council.

But besides the doctrines held by the Universal Church, there are certain doctrines held in particular branches of the Catholic Church which seem to be required by those branches to be believed, though they are not held, at least not necessarily held, in the other branches. What are we to say as to the position of the laity with regard to the enactment of these doctrines? The exact position of these doctrines themselves is rather ambiguous. They cannot be necessary to salvation, for they are not required by all branches of the Church. It seems, however, that no branch of the Church requires these doctrines to be believed, except on the supposition that they are necessary deductions from those held by the Universal Church. Whether they be so or not, and whether they are to be necessarily held or not, is therefore to be decided mainly by close theological argument, founded on much learning and study. The deduction therefore and development of these doctrines should be the work of men learned in this lore—whose duty it is to search, give their days to these studies—that is, bishops and theologians, and cannot be the province of the ordinary simple Christian layman, who has neither learning nor leisure to qualify him for such an undertaking. Moreover, the deduction and development of these doctrines is undertaken by each branch of the Church, principally in her character as a teacher, which leads her not to rest contented with the minimum necessary of divine truth, but ever to explore and analyse further the sacred mysteries, that she may have more to teach the lay flock committed to her: and, if this be so, it is again clear that the proper teachers are the bishops, with the assistance of the learned theologians among the priesthood; and that it is on their endeavours and their teaching that we may best expect the divine blessing and guidance into all truth, and preservation against error. The laity are, however, witnesses to the faith: they share so much in the divine blessing, that their consentient voice is necessary to the perfect ratification of even these doctrines; and this is their function in this matter, as in the matter of declaring the doctrines of the Universal Church.

There is, however, a further function which seems to be given to the laity of each branch of the Church in this matter. It has been said that these particular doctrines, though held because they are considered necessary deductions from those

held by the Universal Church, appear not to be held explicitly by the Universal Church, and not to be therefore necessary to salvation, but are enjoined, or rather taught, by the authorities of each branch of the Church as developments of the other truths. Before, therefore, they were so enjoined, they were not in the position of doctrines compulsorily held even in that branch of the Church, but were rather "pious opinions," that is, opinions which are probably true, and certainly not so untrue as to contradict the doctrines of the Universal Church; but which, on the other hand, are not doctrines of the Universal Church, or such obviously necessary deductions from those doctrines as to require to be compulsorily held in that branch of the Church.

In the history, then, of the reception of each of these doctrines, there comes a stage when the question arises, Shall they remain in their condition of "pious opinions," encouraged but not taught as necessary or required as a condition of membership, or shall they be so accepted and indorsed by that branch of the Church as to be always taught and required in all cases to be held in it? In determining this question, great consideration always is, and rightly, given to the expediency of either course: thus, on the one hand, if the members of that branch of the Church have believing hearts, accepting gladly the truths of the Universal Church, and meditative minds requiring additional doctrinal food, it will be most highly expedient for them that they should have put before them all truth, as well the further development and crown of those truths as the bare necessaries for salvation; and, on the other hand, the members of that branch of the Church may be slow of heart, and may find the burden of these further doctrines more than they can bear, and then it is expedient, in the highest interest of their souls, that this branch of the Church should not enforce upon them any but the absolutely necessary truths. Now on this question, that of expediency only, it would seem that the voice of the laity has far greater weight than in other questions of doctrine: for these reasons, the teaching of these doctrines is a matter almost solely affecting them, the clergy will probably learn and study them in any case; no Church principle is contravened by the laity having so powerful a voice, the question being one of convenience, not of truth; and, lastly, they know themselves best, and are most capable of judging what will or will not be expedient for their souls.

The conclusions, then, on this question of the voice of the laity in legislation on doctrine, conclusions which are pro-

pounded with the greatest diffidence, are these. That in matters of universal faith held by the whole Church, the laity have—both from precedent and the reason of the thing—no voice in the Councils which determine them, but a share in that general voice of the Church which subsequently ratifies or reverses what that Council has determined; that in matters of doctrines held by particular branches of the Church they have a similar position, with this one exception, that on the question of the expediency of enforcing a particular doctrine, not the truth of it, they have a right to be heard in and out of Council, and have even, if necessary, a veto.

But it has been said that there are two elements in the declaration of Christian doctrine—the legislative and the judicial; and we have now to deal with the judicial element. Here no question of expediency can arise; the judges will simply have to determine what is the doctrine, either the doctrine of the Universal Church, or the further doctrine of the particular branch of the Church. The position and right of the laity will therefore be the same, whether universal or particular doctrine be brought before the tribunal.

This second, or judicial element has from the earliest times been given to the Bishop, with appeal in regular gradation from him to the Metropolitan, from the Metropolitan to the Patriarch, and thence, if necessary, to the Council. No doubt the Bishop in many instances did not act without advice, either from assessors chosen by himself, or from his diocesan Synod; and in this Synod the lay-people may have had a sort of undefined influence, rather than vote; but the Bishop was certainly not bound to ask the advice of assessors or Synod in these matters, and neither clergy nor *a fortiori* laity could claim it as a right to be admitted to give advice. And not only has Christian practice given this jurisdiction to bishops. It is part of the doctrine as to the grace given them by their consecration, that they have jurisdiction to decide in cases of doctrine, and to drive away heresy. In the reason of the thing, too, it is plain that the ordinary layman would have insufficient instruction and theological training to enable him to decide on these questions. The Church has ever followed the principle, that while expecting the promised grace of the Holy Spirit to be with her and to guide her, especially in matters of faith, she must yet not neglect to use all the earthly advantages of ability and knowledge that her members possess, and it has never been supposed by her that the gifts of the Holy Spirit were so distributed as to put on a par in the deci-

sion of such questions learned theologians and the untrained intellects of simple Christians.

We are not, of course, speaking of the case of great lay doctors of the Church—men eminent for their learning in theology, who, though not bishops or priests, may yet be invoked by the bishop to give him assistance, or even deputed to report to him on the merits of the case—not as laymen, but as doctors, or learned men. Their individual share in the determination of doctrine has nothing to do with the general rights of the laity in this determination; and though it is very right that their abilities should be thus made use of, and it would be even wrong for the bishop to deprive himself of their assistance, they cannot claim, and much less can the laity in general claim for them, a right to take part in these trials.

The next great question in which the government of the Church is shown, is that of discipline. Discipline, in an ecclesiastical sense, has a peculiar meaning; it is not the same as the discipline of an army, which is perfected in order that the army may most effectually contend against a foreign foe; its intention is rather moral and internal, than external or practical. Discipline is exercised on a layman *pro salute animæ*, for the sake of his own soul's health; on a clergyman it is exercised partly for the same purpose, partly for the sake of removing him on account of his moral offences from the position which he holds over the flock committed to him.

The regulation of discipline by legislation has, therefore, primarily to do with morals, and should as such be in the first instance committed to the teachers of the flock, the bishops, and, in a lesser degree, the priests. On the other hand, as regards lay discipline, the laity have this *locus standi*. They know, in a way that persons set apart from them, bound by peculiar vows, having peculiar privileges, and constantly conversant in holy things, do not know, the peculiar temptations of the laity. They can better judge the degree of moral heinousness which a particular overt offence imports, and what form of penance or censure is most likely to restore the offender to a state of spiritual health. Discipline, in most, if not in all points, is, it is admitted, variable according to the exigences of the age and the country. Its end is to edification. If this be so, surely it is for the laity of any particular branch of the Church to have a voice in saying what they, from their own inward consciousness, can say will best tend to the edification of their brethren.

What has been said, then, points to the union of all three bodies, bishops, priests, and laity, in the matter of lay dis-

cipline: the bishops and priests to say what is the law of God and the end to be attained, the laity to say how that end shall be attained. This seems true of legislation and also of adjudication. In each decision on an individual case of lay discipline, both parties should be represented, the bishop or priest to pronounce the spiritual sentence, with the quasi-sacramental effect that such a sentence, when rightly undergone, has on the offender: the laity to judge in doubtful cases of the probability of the original *mens rea*, or intention of offending, and in all cases to signify by their assent that the sentence is not too hard for the sentenced to bear.

On this point the practice of antiquity seems to have been various. There is, however, at least high authority for the principle laid down, that of S. Cyprian. He had to form a decision on the most important question of the time, the treatment of the *lapsi*, Christians who had in times of persecution fallen from the faith of their baptism, but who now again repented of their fall.

The following extract is taken from Bishop Moberly's Bampton Lectures:—

> No person who reads the Epistles of Cyprian can be ignorant how constantly he recognizes the share of the "plebs Christiana" in the essential powers of the body of the Church. Take for example the following passages:—"For this thing is agreeable to the modesty, and discipline, and life of us all, that the bishops assembling with the clergy in the presence also of the standing (that is, the not lapsed) laity, to whom also themselves respect is to be paid for their faith and fear, we may be able to settle everything by the sacredness of united counsel?" To that which our fellow-presbyters have written, I have not been able to write back anything alone, since I have resolved from the beginning of my episcopate to do nothing of my own private opinion without your counsel (the letter is addressed to the priests and deacons) and without the consent of the lay-people. Nay, the clergy of Rome, in writing back in reply to Cyprian, allege the same thing. In so important an affair, they say, the same thing approves itself to us which you have already dealt with, namely, that the peace of the Church (that is, the restoration of the lapsed) must be deferred; and that then a communication of counsels being made with the bishops, priests, deacons, and standing lay-people, the case of the lapsed be dealt with.

Thus much for the voice of the laity in lay discipline. In the discipline of the clergy they can claim no right on the grounds here stated, and there is no known practice of the Church giving them such a right. The clergy alone legislate and adjudicate upon the discipline of the clergy, both as teachers, knowing the end to be obtained, and as brother clergy, knowing the character of the clergy and the means by which the end is to be attained. It is not meant however that there may not be cases in which some admixture of the lay element, by way of counsel rather than vote would not be useful, especially in adjudications; but the laity cannot claim this

as a right, it will be at the utmost only conceded to them by the clergy upon special grounds, with an absolute power of revocation when to the clergy it should seem fit.

One word here to guard oneself against being suffered to push these doctrines too far in practice. In every case of exercise of discipline it may be that the supposed offender will deny the commission of the act attributed to him, and then there will be a preliminary question, whether he has or not, actually committed the offence charged. In deciding this question, the faculties of a civil judge or a jury are required; and there is no reason that laymen, who from their worldly experience are much more versed in matters of sifting and weighing evidence, and the practical rules of impartial investigation, should not be employed—nay, they have a right to be employed on these occasions—leaving always, even in cases of clerical discipline, after the fact has been decided, the determination of the law and the application of it to the clerical judges.

We have thus far dealt with the voice of the laity in governing the Church in matter of doctrine and discipline; and endeavoured to show that in these matters their voice has, of right, and in accordance with the practice of the Church, only a very limited weight. But in all other matters connected with the government of the Church—and these may probably be classified as administration and patronage—we find no such limits imposed by Christian practice, or arising from the reason of the thing; and therefore the other principle laid down upon entering into this subject came into play, that on account of the advantages which accrue from self-government, the laity should be allowed their full share in these matters.

Under the head of administration, should be included all questions relating to the finances of the Church, the mode of raising and distributing her funds, and the management of landed property. There should be further included arrangements as to the building and repairing of parsonage houses, and other establishments belonging to the Church, the division of parishes and even dioceses, or the re-arrangement of their boundaries where necessary; the right of the laity in this matter being clearly recognized by the 12th and 17th canons of the Œcumenical Council of Chalcedon; and the fixing of the stipends of the several church functionaries, clerical or lay, with the temporal conditions on which the payment of their stipends should depend, or on which pensions for long service might be given.

There is, moreover, one matter of great importance which

seems to come rather under this head than any other; and in which it is submitted the laity have a full voice—that is in the determination of the forms of liturgies and other public services, and the ceremonials to be used in the public worship of the Church. The right of the laity to share in the arrangement of matters of public worship and ceremonial, and the limit of that right, are fixed by the principles regulating these matters; which seem to be those laid down by S. Paul, "Let all things be done decently and in order," and "Let all things be done to edifying."

These first, referring to the pattern of heavenly things, as most accordant with, and symbolical of, the doctrines of the Church, and represented by the ritual of the Church in all ages and in all countries, being for the episcopate and the priesthood to consider; the second principle, that of the edification of the minds of the laity, being a matter rather for the laity to judge of.

Thus matters of public worship and ceremonial fall to be decided by the common voice of bishops, clergy, and laity; not that each body has an equal voice, as in matters of ordinary administration, finance, division of cures, and the like; but that each body has a special voice relating to a particular branch of the question—the laity having no right to oppose a ritual observance as being to their mind un-Christian or un-Catholic, the bishops and priests yielding to the laity in their opinion of the expediency of the introduction of the observance, as affecting the souls of the laity. Both bodies would on these principles be represented in legislation and in adjudication in these matters. In adjudication especially the presence of trained laymen, lawyers accustomed to the construction of documents and laws, must afford valuable assistance.

The next matter is that of patronage. By patronage is here meant the selection of an individual to fill some particular vacant office in the Church. These offices are of three kinds: (1) lay offices, or offices which may be filled by laymen, whether clergymen are or are not eligible for them also; and these are either those of lay judges, where such are required in the causes I have already mentioned, or offices of administration, and may in either case be filled, or the mode of filling them may be regulated, by the laity; (2) parochial or priestly cures; (3) bishoprics. Both these latter stand pretty much on the same footing; as to both it must be admitted that Christian practice requires not merely the ordination or consecration of the holder of the office—this of course is necessary—but also the spiritual mission to the particular cure or bishopric

by the superior who has jurisdiction over it. Thus S. Paul made it his rule not to build on another man's foundation: that is, apostle as he was, not to intrude in a place where another apostle had been, or even whither another apostle had sent his subordinate; while, on the other hand, for the missions of his own foundation he consecrated whom he would, Timothy or Titus, or others, to be bishop; and S. John similarly consecrated S. Polycarp. Nor, indeed, has this principle ever been disputed. In the case of missions or missionary dioceses, where there are no or comparatively few faithful to have any voice in the matter, the spiritual mission of the territorial superior from whose jurisdiction the missionary is sent is alone necessary. But in the case of settled Christian Churches, where the country is organized into established parishes, or cures and dioceses, the flock in each having a certain unity and order among themselves, the voice of those who are to be subordinate to the new officer, whether priest or bishop, has in the best times been always allowed to be given, not as finally determining the election of the officer, for that must be done by the spiritual superior, who can alone judge of his fitness in the ultimate result, but rather as calling for or recommending some spiritual person whose appointment would be agreeable to their own feelings, if his qualificationsare such as to fit him in the judgment of the superior for the office.

As regards parish priests there is perhaps less to be found in the earlier history of the Church; but, on the other hand, the later practice and theory has been more uniform in support of the right of the laity to a voice in the selection of their priest. Even the Scotch Church, which of all Churches of the Anglican communion concedes least to the laity, yields to them this right. Their 10th Canon, according to the revision of 1838, is as follows:—

> Whereas it has never been the practice of this Church, nor the wish of her Bishops, to interfere directly or indirectly with the funds or temporalties of her Congregations, it is therefore fully acknowledged that the right of presentation to any chapel vacant within her pale, is vested in those who are appointed to manage its affairs, whether known by the title of Trustees, Churchwardens, Vestrymen, Managers, Proprietors, or Directors, and who in virtue of their office procure the means of the minister's support. Yet to preserve the ancient and regular discipline of an Episcopal Community, it is hereby enacted that no Presbyter shall take upon himself the pastoral charge of any congregation to which he may be presented before the Deed of Presentation be duly accepted by the Bishop. . . . . But if no election shall be made within six calendar months after a vacancy hath taken place, the right of nomination of a pastor shall then lapse to the Bishop of the diocese, whose appointment shall be binding on all the members of the congregation.

The scheme of the new Irish constitution provides for the

appointment to vacant cures by a board of nomination, consisting of one lay and two clerical members of the Diocesan Synod, and three nominators to be elected *ad hoc* by the vestrymen of the vacant parish, the bishop having a vote at this board, and also a power to reject afterwards the presentee of the board, subject to an appeal to a tribunal, which is to be established by the General Synod of the Church to receive appeals in that behalf. This tribunal has not apparently yet been constituted. It is obvious that much depends upon its constitution: it might be a purely clerical or even episcopal one, that is, consisting of the metropolitan of the province with or without his suffragans, for it is to sit on appeal from the bishop, deciding merely on the spiritual qualifications, for the purpose of giving the spiritual mission. Any other tribunal of appeal will be inconsistent with Catholic practice.

In America, by Canon 30 of 1832, the vestry deliver to the bishop, or, in the vacancy of the see, to the Standing Committee of the diocese, a certificate that they have chosen A. B. their rector, and the bishop proceeds to satisfy himself that the chosen person is a qualified minister, and if he is not rejects him without appeal.

It is well known that in England and many other countries, principally those affected by feudalism, the founder of the church being generally the lord of the manor also, and thus representing the parishioners, who were the tenants and vassals of his manor, acquired the right of patronage, first for himself, then for the religious community which he desired to introduce, and lastly for any person to whom as a piece of valuable property he could sell it. In some places, though, to this day the election of their rector or vicar is vested in the parishioners, or in the members of the municipal corporation of the town.

Next as to the election of bishops. Many people of much learning on these subjects deny that the laity had in primitive times any right to a voice in the choice of their bishop. But with all respect for their view it does not carry conviction. It is agreed that in the ultimate resort the decision lay with the metropolitan and the other bishops of the province, whose confirmation of the election was absolutely necessary to its validity; but the original election or recommendation lay with the clergy and laity of the vacant diocese. The writers holding the opposite view would at once say—of course the clergy elected, not the laity. On this point, however, the testimony of the great Canonists is conclusive. Thomassinus says that both clergy and laity had a voice in the election; though he

thinks more weight was given to the clergy than the people :* Van Espen says that the clergy took the principal part in the election, but that both laity and clergy really elected "vere eligerunt."† It is well known that the practice of the emperor giving his assent to all elections of bishoprics—a practice which was allowed at one time by the whole Church—arose from his being considered as the head and representative of the lay people, whose place he ultimately took.‡

The constitution of the Scotch Church, unfortunately, confines this right of a voice in the election of bishop to the clergy only. Their 3rd Canon is as follows :—

Every Bishop is hereby required to appoint one of the Presbyters of his diocese to act under hm as Dean, who in the absence of the Bishop shall preside in all Diocesan Synods; and the Dean thus canonically appointed shall upon the demise or translation of any Bishop notify the same to the Primus, who, being empowered by his colleagues, shall thereupon issue a mandate to the Presbyters of the vacant diocese, requiring them to proceed to the election of a successor. Should they make choice of a person already invested with the Episcopal character, the Bishop so elected shall have no jurisdiction over that diocese, unless his election be ratified by the majority of the Episcopal College, transferring to him by a formal deed the superintendence of the diocese. But if the Presbyters of the vacant diocese shall elect a Presbyter to be their future Diocesan, of whose fitness for that office the Bishops shall declare they have sufficient reason not to be satisfied, in that case the Presbyters shall be required to proceed to a new election.

The constitution of the American Church allows the mode of election to be determined by every diocese. As a matter of fact, however, in all the dioceses both clergy and laity take part in the election, though the mode of their participation differs in some points of detail.

The material parts of the constitution of the Irish Church —in this point not deviating from the primitive model—are as follows :—

Chap. I., sec. 24.—From and after the 1st of January, 1871, if any See be or shall become vacant, the Archbishop of the Province shall, as soon as may be convenient, convene the Diocesan Synod for the election of a successor. And if the Archiepiscopal See of the Province be vacant or the Archbishop be unable, then the person for the time being authorised to convene the Diocesan Synod shall convene the same . . .

25.—The Diocesan Synod shall thereupon meet and, save in the cases hereinafter specially provided for,§ the clerical and lay members present shall in the first instance vote by voting papers each for one or more persons (not exceeding three) being Bishops or Priests of not less than thirty years of age: Provided that no person shall be entitled to vote for himself.

And after providing that the person so to be elected shall have a majority of two-thirds of each order in his favour, or

* *Vetus et Nova Ecclesiæ Disciplina*, vol. ii. p. 313.
† Pars i., tit. xiii., c. 1, § 6.
‡ *Ibid.* c. 3.
§ This relates to Armagh.

that if not, two persons shall be selected, each by a majority of votes; it proceeds as follows:—

29.—If any one person shall be declared elected by the Synod as aforesaid, his name shall be forthwith transmitted to the Bench of Bishops, who, if satisfied of his fitness, shall take the necessary steps to give effect to such nomination; and if more than one person shall have been chosen by the Synod as aforesaid, the names of such persons (not exceeding three) shall be transmitted to the Bench of Bishops, who shall thereupon elect by a majority of their votes one of the said persons, if satisfied of his fitness, to the vacant See.

Having in these latter pages discussed the rights of the laity in the several parts of Church government, and endeavoured to show in what instances these rights amount to substantive shares in the actual government of the Church, it remains to consider by what scheme of representation their share in this government can be provided for them.

In an independent unestablished Church, such as the Scotch, the American, the Irish, or that in some of our great Colonies, the existing machinery is very simple; though we shall have to inquire how far it corresponds with the strict canonical rule.

In each diocesan governing body, call it synod if you please, or if you please confine the term synod to that part of it which consists only of the bishop and clergy, there exists a house or body of lay delegates chosen in various ways so as to represent the laity of each parish or cure, who sit and vote with the clergy, under the presidency of the bishop. In the provincial or national assembly there are similarly a body of diocesan lay delegates, a body of clerical lay delegates, and a House of Bishops.

The 2nd and 3rd articles of the American Constitution on this head are as follows:—

Article II.—The Church in each diocese shall be entitled to a representation of both the clergy and laity, which representation shall consist of one or more deputies, not exceeding four of each order, chosen by the convention of the dioceses.

In all questions, when required by the clerical and lay representation from any diocese, each order shall have one vote; and the majority of suffrages by dioceses, shall be conclusive in each order, provided such majority comprehend a majority of the dioceses represented in that order. The concurrence of both orders shall be necessary to constitute a vote of the convention.

Article III.—The Bishops of the Church, when they shall be three or more, shall, whenever general conventions are held, form a separate house, with a right to originate and propose acts for the concurrence of the House of Deputies, composed of clergy and laity, and when any proposed act shall have passed the House of Deputies, the same shall be transmitted to the House of Bishops, who shall have a negative thereupon; and all acts of the convention shall be authenticated by both Houses.

And in all cases the House of Bishops shall signify to the convention

their approbation or disapprobation (the latter with their reasons, in writing) within three days after the proposed act shall have been reported to them for concurrence; and in failure thereof, it shall have the operation of a law.

Not unlike these provisions are those contained in the constitutions of the synods in our colonial provinces and dioceses. These vary in some details, but all seem to concur in these two points; they admit a lay representation, but give an absolute veto to the bishop in the diocese, and to the House of Bishops in the provincial synod. This seems to be the case in the provinces of Canada, New South Wales, New Zealand, and South Africa. The objection alike to these and to the American constitution is, that it gives the laity an apparent right to a voice in all matters of legislation not exclusive of doctrine and clerical discipline;—the judiciary power is often differently arranged, and is not always subject to the same censure. This objection is, however, to some extent answered by the absolute veto given to the bishops; for though it may be wrong according to all Christian theory and practice, as has been said, for the laity to determine matters of doctrine and clerical discipline, yet inasmuch as the sanction of the bishop and priests is requisite to give their determination any force, the laity cannot effectively legislate on these matters, and their proposals may be considered as in the light of petitions only. Still the form of the constitution seems in this respect incorrect and calculated to mislead, unless the laity are well instructed as to the canonical limit of their rights.

The constitution of the Irish Church however is in these respects much worse. After giving to the Diocesan synod, the same form of representation as is given in the colonial provinces, and providing that where the bishop alone dissents, the matter shall be referred to the General Synod, whose determination shall decide the question, it proceeds as to the mode of legislation to provide as follows:—

Chap, I., sec. 22.—The Bishops shall vote separately from the representatives, and no question shall be deemed to have been carried unless there be in its favour a majority of the Bishops present, if they desire to vote, and a majority of the clerical and lay representatives present voting conjointly or by orders; Provided always, that if a question affirmed by a majority of the clerical and lay representatives voting conjointly or by orders, but rejected by a majority of the Bishops, shall be re-affirmed at the next ordinary Session of the General Synod, by not less than two-thirds of the clerical and lay representatives voting conjointly or by orders, it shall be deemed to be carried, unless it be negatived by not less than two-thirds of the then entire existing order of Bishops, the said two-thirds being present and voting and giving their reasons in writing.

The following are the Canons of the Scotch Church on this subject :—

31.—A Diocesan Synod shall be holden annually in every Diocese of the Church at such time and place as the Ordinary or as the Dean empowered by him shall appoint, and shall consist of the Bishop, the Dean, and such clergymen as have been instituted to their charges; and shall be attended by all the clergy of the Diocese, unless hindered by some sufficient cause, whereof notice shall be given to the Diocesan. . . . . Every Diocesan Synod may also suggest rules for the regulation of Ecclesiastical Affairs, which, if approved by the Bishop, and not inconsistent with the constitution and Canons of the Church, shall have the force of laws within the diocese.

32.—Every General Synod shall consist of two chambers; the first composed of the Bishops alone; the second of the Deans, the Pantonian Professor of Theology *ex officio*, and the representatives or delegates of the clergy; one such delegate being chosen by and from the Incumbents of each diocese. The second chamber shall elect a Preses or Prolocutor, who shall at all times have free admission to the first chamber, when communication is on either side required.

Canons or rules for the order or discipline of the Church shall be made and enacted by a General Synod only; and no law or Canon shall be enacted, abrogated, or altered, but by the consent and with the approbation of the majority of both chambers. If the chambers shall happen to be equally divided in their opinion son any question, the Primus in the Upper House and Prolocutor in the Lower, shall have the casting vote.

The Canons provide also for holding episcopal synods annually.

It may be as well here to mention the arrangements for the judiciary in the unestablished Churches of our communion.

The American system leaves the arrangement of the tribunals to each diocese, with the exception of the remarkable provision as to sentences upon clergymen, which will be mentioned directly. It appears that the general practice in case of clergymen is to have a board of "tryers" nominated by the bishop, consisting of a certain number of clergymen; these clergymen try the case and report to the bishop, who may, if he thinks proper, order a new trial; but if he agree with the report, and that report be to find the clergyman guilty, proceeds to pronounce canonical sentence upon him, in some dioceses of his own decision, in other dioceses a sentence not greater than that which the "tryers" recommend.

An accused bishop is tried before the whole Bench of Bishops of the American Church; and at least seven of them, besides any bishops who may be accusers, must be present to form a quorum. (Can. 3 of 1844).

Lay discipline is exercised only apparently on complaint of the parish priest; and then by the bishop, either alone or with the concurrence of two laymen and two clergymen.

There appear to be appeals from the Diocesan tribunals.

Their 6th Article as to sentences is as follows :—

None but a Bishop shall pronounce sentence of admonition suspension, or degradation on any clergyman, whether Bishop, Presbyter, or Deacon.

The provisions in the Irish Constitution as to ecclesiastical tribunals are as follows :—

Chap. IV., sec. 3.—The Archbishop or Bishop, or his Commissary, shall be the judge in the Diocesan Court, and shall in every case be assisted by his Chancellor. The clerical members of the Diocesan Synod shall elect three clergymen, and the synodsmen three laymen, who shall hold office for five years, and shall be capable of re-election. The Archbishop or Bishop shall in every case summon by rotation to sit with him, a clergyman and a layman from those so elected, to whom, along with the Archbishop or Bishop, or his Commissary, all questions of fact shall be referred. If both parties shall express their consent in writing, it shall be in the power of the Archbishop or Bishop or his Commissary, to hear the cause alone.

Where the bishop is himself the accuser, the Court shall consist of the other members without the Bishop ; but if a case of doctrine is involved, it shall only determine the facts of the case, and shall then send it to the Court of the General Synod to determine the doctrine. From the Diocesan Court either party may appeal to the Court of the General Synod. There is no provision enabling an appeal from the Court of the Bishop to that of the Metropolitan ; and, in fact, the Court of the Metropolitan is, contrary to all usage, destroyed.

The Court of the General Synod which is thus the sole court of appeal in ordinary cases, the first and last Court in most cases of doctrine, and also the first and last Court for trial of a bishop or archbishop—(Sec. 27) for even archbishops are made subject to it—is thus constituted.

Sec. 19.—The full Court of the General Synod shall consist of one Archbishop, with one Bishop, and three laymen, to be selected as hereinafter provided. The Archbishop of Armagh and the Archbishop of Dublin shall sit in turns. The Bishop shall be chosen by the Archbishops. If the Archbishop, whose turn it is to sit, shall be unable to attend, the other Archbishop shall take his place, and if both shall be unable to attend, the Archbishop shall select a second Bishop to take his place. The General Synod shall name not less than six or more than ten lay members of the Church of Ireland, from whom the lay judges of said Court shall be selected.

These lay judges are to have held certain high temporal offices. Three of them are to be chosen by ballot for each case.

It is obvious how totally and how needlessly un-Catholic such a tribunal as this is ; to make laymen judges in a tribunal of ultimate resort, the principal duties of which will be to determine cases of doctrine and of clerical discipline, which will in some cases of doctrine, where a priest is concerned, be the only tribunal, and will always be the only tribunal for a trial of a bishop, is contrary to all principle. But more, these

laymen are to be the majority of the judges, and though a sentence of condemnation may not be passed unless the two bishops agree to it, yet a sentence of acquittal, perhaps fixing in the Church some teacher of false doctrine, may be passed against their vote. Bishops are to be tried before a tribunal which, according to accident, may or may not contain the Metropolitan to whom they have sworn canonical obedience, and one other bishop only. Nay, a Metropolitan may be tried by his brother Metropolitan and one bishop, or possibly, in his brother Metropolitan's incapacity, by two suffragan bishops, those perhaps his own suffragans.

That such provisions should ever have been made law, shows strongly the canonical imperfection of the Irish constitution, the over-great weight which the laity have in it, and the way in which they have intruded into matters without their own sphere.

The Scotch system has no express provision as to lay discipline, unless it be that contained in the 35th Canon :—

> In any differences which may arise between a pastor and members of his flock which cannot be amicably settled, the matter in dispute must be carried before the Ordinary.

By the 36th Canon, if the Bishop have reason to believe that one of the clergy have committed a crime

> Of a grave or scandalous nature, then the Bishop shall, after due notice of the charge stated in precise terms to the parties concerned, summon them before himself, sitting in Diocesan Synod, and shall appoint the Dean, or if necessary some other Presbyter, to state the charge and bring forward the evidence; and having fully heard both the accuser and the accused, and all the evidence that either can produce, he shall, after having received the opinion of each member of the Synod, proceed to pronounce sentence.

By the 36th Canon,

> Episcopal Synods shall receive appeals from either clergy or laity against the sentence of their own immediate ecclesiastical superior.

The provisions for ecclesiastical tribunals in the province of New Zealand were very carefully framed in an act of the Colonial Synod. This act provides for a legal Chancellor of the diocese, a legal advocate and a kind of jury, four, two clergymen and two laymen, who are to be assessors to the chancellor, and are to be unanimous in their verdict on the facts before sentence can be passed. There is to be one appeal upon points of law, and upon points of doctrine or ritual, to the Bench of Bishops.

Thus far, with relation to the unestablished Churches of

our communion, and the position held in each of them by the laity.

But what are we to say as regards our own Established Church? We have no synods or conventions in which the laity have any voice at all; and we are thus driven to one of two alternatives, either independent organization in volunteer societies, operating, not with a constitutional influence, but through the pressure of public opinion which they bring to bear, or to the control of the State and the secular Legislature. It has however been already shown in the first part of this paper, that the control of the State can never be, even in a country where all the people are members of the Established Church, a substitute for the legitimate constitutional powers of the laity; how much more so in a country like England, where so large a portion of the people are not members of the Church, belong to alien or even hostile religious bodies, or procced in matters of legislation upon secular principles only; and are in any case in a state of ignorance of the Church, such as renders them incompetent to attempt legislation for her!

We have indeed our Convocations of the two provinces, which canonically represent the bishops and the clergy of the country; and we have the power of calling diocesan synods, similarly representing the bishop and clergy of each diocese; but the Convocations cannot assemble unless summoned by the Crown, and cannot even treat of and prepare the canons and ordinances which they may think necessary without preliminary license; and both they and the diocesan synods cannot promulgate or put into execution the canons which they have framed without the ratification of the Crown. The results are these: As the population grows, as civilization increases, as the material circumstances of the country alter, as the relations with other countries grow more numerous, and as manners change, alterations in the discipline and in the general administration of the Church are constantly required, if her ministers are not to fall into apathy and slumber, and if the ship of the Church is not to be left high and dry, an obsolete and useless craft, by the receding waves of time. It is so with all other organizations or corporations; and they are allowed to make bye-laws from time to time in order to adopt themselves to new circumstances. But the Church is allowed to make no such bye-laws for herself: the laity have no organization or assembly; the bishops and clergy could not successfully make these alone—at any rate in many matters—and for this very reason, lest they should assume too much power and trench

upon the privileges of the laity, they are practically suffered to do nothing, not even in their own sphere and for their own discipline. Parliament cannot fill the place. It undertakes to do so sometimes from the urgent necessity of something being done: but immediately on its so doing two things become apparent: the first its incapacity for the work as shown in the bungling inefficiency of its legislation ; the second, its powerlessness to command that hearty, loyal assent of the members of the Church, without which no laws, however excellent, will be of avail. On the first point, it is only necessary to mention two or three facts. Down to the fifty-eighth year of the reign of George III.—that is till 1818—there was no power, in spite of the growth of the population and the shifting of its centres which could divide or re-arrange parishes, or authorize the building of new churches, which should be other than mere chapels of ease. Parliament was then compelled to undertake the task. Since that time, that is in fifty-four years, it has passed at least nineteen statutes on this subject alone, and most of them with scores of clauses and pages long. Besides this there have been incidental provisions on this subject in other statutes ; and the statutes go on increasing. There was one last year—though a small one—and there was one the year before ; and probably there will be another this year. And the terms of the statutes are so complicated and contradictory that judges make it a joke when they have to construe them ; while the benefactor who wishes to found a church, has often cause to rue the mistakes into which they lead him, and the waste of good money which they compel.

In the third year of Her Majesty's reign, in 1840, Parliament was compelled to pass an Act for regulating the tribunals which were to enforce discipline on the clergy—a subject which had not been touched since the reign of Henry VII. The act was so ill drawn that after dozens of cases have been decided on it—at great cost—there are several provisions in it still obscure ; and it gives satisfaction to no party in the Church.

Two years ago it was thought necessary to pass an Act amending the law as to the dilapidations of parsonages, vicarages, and other parochial incumbencies.

This act is seventy-three clauses long. It is often difficult to understand and is full of omissions, while it has created a whole body of new officers and has established a system of procedure which in ordinary simple cases is of absurdly disproportionate expense, and all to be paid by fees out of the

pockets of the clergy. And, moreover, it had to be altered at once. There was an amendment Act last year; and we may have another.

And not only is Parliament incompetent through ignorance, it is also unwilling to legislate. It is notorious that it is with the greatest difficulty that Church Bills, even on simple matters where every one admits the usefulness of the measure, can be got through the two Houses, particularly through the House of Commons, where there are many Nonconformists who object to the time of the House being taken up with discussion of Church matters, and some even who would oppose any legislation, on the sole ground alone, that it will be for the advantage of that Church to which they are opposed.

It is clear that this state of things cannot last long; and for it there is, apparently, only one effectual remedy. Recognize the true position of the laity in the Church, give them some voice in its government. Let there be side by side with the Convocation in each Province a house of lay delegates, chosen by real Churchmen and communicants; let this house and the existing Convocation agree upon an arrangement as to their respective functions, so that no one body shall trespass upon the canonical rights of the other; and let the Provincial assemblies thus formed legislate for the wants of the Church. It may be that Parliament will require some voice in the matter; but if so, let that voice be one of control and veto only, not entering into all the details of which it can understand nothing, but accepting as a rule in good faith what is propounded by the Church assemblies as for the advantage of the Church, and only interfering in very grave matters.

There are not wanting precedents for such a course: Parliament is in the habit of appointing bodies of commissioners who legislate on matters within their sphere subject to the control of Parliament This control is expressed in one of two ways: in one the commissioners frame a complete scheme and lay it before Parliament, which accepts it *in toto*, unless upon very strong grounds indeed it rejects it. This is the case with the schemes of the Inclosure Commissioners and of the Charity Commissioners. The other way is to give the commissioners or some such body power to frame schemes, which are immediately laid before Parliament; if then either house so far disapprove of the scheme, as within a certain number of days or weeks to make an address to Her Majesty against it, it fails altogether; but if no such address

is made, the scheme, without any Act of Parliament, becomes law. Thus the Endowed Schools Commissioners prepare schemes, which when approved by Order in Council become law, unless either House address the Queen against them. But there is an analogy still closer, that of the Ecclesiastical Commissioners, who, with the further sanction of an Order in Council, have the same power of legislating within the sphere of matters committed to their control.

It is only nccessary to extend the principle a little farther, to create a lay house, and to give liberty to the existing Convocations, and you have a remedy for all evils in the administration of our Church. Without it, you have a Church, with a laity which, though anxious to take its proper share, is allowed no share in her government, with an episcopate and clergy who have a share in it, nominally very great, but actually fettered in the most minute matters, for fear of their infringing the rights of the laity; and a Parliament which, though unwilling, has not only to discharge its proper functions of applying the control which the State may exercise, but also to assume to itself the share in the government of the Church which belongs to her laity, and even in many respects the initiative which appertains to her bishops and clergy.